

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

IN RE:)	Chapter 13 Case
)	Number <u>91-40161</u>
JAMEL RAGIN)	
MEROCINA RAGIN)	at 2 O'clock & 38 min. P.M.
)	Date: 9-22-93
Debtors)	
_____)	

ORDER

Jamel and Merocina Ragin, debtors in the above captioned case, are before the court on their Motion To Compromise Claim And To Retain A Portion Of Insurance Proceeds And Motion to Incur Debt. Having heard the evidence and considered the briefs of counsel and applicable authorities, I enter the following Order.

FINDINGS OF FACT

On January 24, 1991 debtors filed a chapter 13 petition with this court. At the time of filing, debtors owned a 1989 Isuzu Amigo on which Nationsbank, as successor in interest to Citizens and Southern National Bank, has a first lien.¹ The filed proof of claim

¹Although Citizens and Southern National Bank filed the proof of claim in this case, future references will be to the claim of

asserted a secured claim in the amount of \$11,164.30. However, under the terms of debtors' confirmed plan, Nationsbank's claim was bifurcated into an allowed secured claim of \$7,413.00 with interest payable at 12% per annum and an allowed unsecured claim in the amount of \$3,751.30. According to the report of the trustee at confirmation, the plan will pay a 10.42% dividend to unsecured creditors and Nationsbank is expected to receive \$391.00 on the unsecured portion of its claim.

On April 23, 1993 Jamel Ragin wrecked the Isuzu Amigo in a one car accident rendering the vehicle a total loss. Debtors' insurance company has offered to pay \$6,650.00 for the total loss of the vehicle and has issued a joint check in that amount to debtors, Nationsbank, and the chapter 13 trustee. Debtor now proposes to accept these proceeds, to use them to pay off the remaining balance owed on Nationsbank's allowed secured claim, to use the remainder after such payoff as a down payment on the purchase of a replacement vehicle, and to incur new debt in the form of additional financing on the replacement vehicle. Debtors do not offer Nationsbank a security interest in the replacement vehicle, but instead propose to value the new vehicle at \$6,650.00 and provide Nationsbank a secured claim with interest payable under the plan in the amount which is the difference between \$6,650.00 and the balance owing on

Nationsbank.

Nationsbank's allowed secured claim.² Payment of Nationsbank's allowed unsecured claim is to continue to be made under debtor's plan as confirmed.

At the hearing on debtors' motions, it was established that debtor owed a remaining balance of \$4,287.21 on Nationsbank's allowed secured claim. Also owing was a balance of \$390.89 on the unsecured portion of Nationsbank's claim.

CONCLUSIONS OF LAW

Nationsbank objects to debtors' motions, contending that it should receive the entire amount of the insurance proceeds. Under the terms of debtor's plan as confirmed, debtors' vehicle was valued at \$7,413.00. During the course of the bankruptcy debtors had made payments on Nationsbank's secured claim such that at the time of the hearing that claim had been paid down to \$4,287.21.³ However, Nationsbank argues that the present value of the vehicle is established by the insurance company at \$6,650.00 and as its security interest in the collateral attaches to such proceeds, its claim should be deemed valued as secured to the full amount of those proceeds. In effect, Nationsbank is seeking to revalue the vehicle

²Frankly, I am puzzled as to how debtors will provide Nationsbank with a secured claim without also providing the bank with a security interest in the replacement vehicle.

³Nationsbank's counsel lists the claim as having been paid down to \$4,281.67.

post-confirmation and thereby to deprive debtors of the equity they have gained by making payments on Nationsbank's secured claim during the course of the bankruptcy.

Nationsbank's argument ignores the binding effect of the confirmation order.

The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

11 U.S.C. 1327(a).

Once a plan has been confirmed, § 1327(a) establishes that the value of a secured claim allowed under that plan is not subject to revision post-confirmation. See Meade v. GMAC, 1990 WL 191860 (Bankr. E.D. Pa. 1990). A creditor is precluded from asserting, post-confirmation, any interest other than that provided for it in the confirmed plan. See In re Duke, 153 B.R. 913 (Bankr. N.D. Ala. 1993) and cases cited therein. Nationsbank is not entitled to receive the entire amount of insurance proceeds.

Under the confirmed plan Nationsbank as the holder of an allowed secured claim will be paid the value of its collateral determined at confirmation, Seven Thousand Four Hundred Thirteen and No/100 (\$7,413.00) Dollars, over time from distributions made by the Chapter 13 trustee together with interest payable at 12% per annum. If the balance of the allowed secured claim of Nationsbank is paid

with a portion of the insurance proceeds or overtime by payments from the debtors the plan provisions are carried out. To require the debtor to make payments under the plan reducing the amount of the allowed secured claim and then require the trustee to turn over all insurance proceeds in excess of the allowed secured claim balance to Nationsbank alters the plan contrary to 1327(a).

Nevertheless, Nationsbank contends that § 1327(a) is not binding as to valuation because of 11 U.S.C. § 506(a).

(a) . . . [s]uch value [of a creditor's interest in the estate's interest in property] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. 506(a).

According to Nationsbank, § 506(a) allows for revaluation of its interest in its collateral despite the order of confirmation because the present action involves a disposition or use of the collateral securing its claim. Nationsbank is mistaken. The purpose of the res judicata effect of a plan's confirmation under § 1327 is to provide finality to the claim allowance and valuation process. Section 506(a) provides the means for that allowance and valuation process. Once confirmation has occurred, a plan's treatment of a

claim can only be modified under § 1329,⁴ which must be narrowly construed as an exception to the binding effect of § 1327(a). In re Duke, 153 B.R. 913, 918 (Bankr. N.D. Ala. 1993). The provisions of § 506(a) were complied with at confirmation. Nationsbank had an opportunity to be heard on the valuation of its claim at the confirmation hearing. The terms of the confirmed plan conclusively established the value of Nationsbank's secured claim and regarding the plan nothing has changed.

Nationsbank also argues that it should be entitled to the entire amount of the insurance proceeds because its security interest in debtors' vehicle automatically attached to these proceeds. Nationsbank cites 11 U.S.C. § 552(b) as supporting that

⁴Section 1329(a) provides:

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee or the holder of an allowed unsecured claim to--

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments; or

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan, to the extent necessary to take account of any payment of such claim other than under the plan.

proposition. Section 552(b) provides, in pertinent part:

(b) . . . if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, product, offspring, rents, or profits of such property, then such security agreement extends to such proceeds, product, offspring, rents or profits acquired by the estate after commencement of the case to the extent provided by such security agreement and applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

While § 552(b) does provide that creditors ordinarily retain their security interest in the post-petition proceeds of their pre-petition collateral, it does not alter the valuation of the creditor's interest in the estate's interest in the collateral. Whatever represented the collateral securing the claim, which includes not only the vehicle but also a right to proceeds, that property interest was valued at confirmation.

In this case, Nationsbank seeks to have its security interest attach to the entire amount of insurance proceeds, while debtors propose that Nationsbank be paid the balance on its secured claim and that no security interest be given to Nationsbank in the replacement vehicle. Instead, debtors seek to provide Nationsbank with a secured claim to be paid under the plan with interest in the amount of the insurance proceeds less the net balance remaining on

Nationsbank's allowed secured claim.

I decline to adopt either party's approach. I have previously ruled that Chapter 13 creditors holding allowed secured claims are entitled to retain their lien on collateral until a discharge has been entered, notwithstanding the fact that the secured claim has been "satisfied" by payment in full. In re Holiday, Chapter 13 Case No. 91-10426 (Bankr. S.D. Ga. March 30, 1993). In this case, debtors' proposal contravenes this ruling by attempting to negate Nationsbank's lien prior to discharge. However, to allow Nationsbank's security interest to attach to the entire amount of insurance proceeds would alter the valuation of its claim as provided for in the confirmed plan and contravene the provisions of § 1327(a).

The approach that best balances the rights of the debtor and the creditor, and the one I undertake today, is to allow debtors to use the insurance proceeds to purchase a replacement automobile with Nationsbank retaining a first lien in the replacement vehicle. This protects Nationsbank's right to recover outside of bankruptcy in the event of a dismissal prior to discharge or any future grant of a relief from stay and yet, at the same time helps to ensure the successful reorganization of the debtors by providing them with needed transportation. The allowed secured claim of Nationsbank remains unaffected.

It is therefore ORDERED that debtors' Motion To Compromise Claim And To Retain A Portion Of Insurance Proceeds and Motion to

Incur Debt are granted in part and, conditioned as follows:

The debtors are authorized to accept the settlement offered by the insurance company in proceeds of \$6,650.00; and

The debtors may use the proceeds to purchase a replacement automobile with a retail value of not less than the amount of the insurance proceeds; and

Nationsbank is to be provided with a first lien on said replacement vehicle.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 22nd day of September, 1993.